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Twenty-ninth session

SUMMARY RECORD (PARTIAL)* OF THE 602nd MEETING

Held at Headquarters, New York,
on Monday, 10 June 1996, at 3 p.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.15 p.m.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/50/17; A/CN.9/421 and 426)

1. The CHAIRMAN said that if she heard no objection, she would take it that the Commission agreed to entrust the publication of the Guide to Enactment of the UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication to the secretariat, which would be authorized to make changes as suggested by the Commission. In that way, it would be possible to publish the Guide together with the Model Law.

2. It was so decided.

Possible future work (continued)

3. The CHAIRMAN said there was a consensus that the Commission should continue to accept and consider proposals for future work, but that such proposals would not be considered to be a high priority.

4. Mr. SANDOVAL LÓPEZ (Chile) said that the Commission should not consider any new topics in the area of maritime transport for which numerous conventions already existed. His country had joined the international effort at harmonization by adopting uniform legislation such as the Hamburg Rules. If it was decided, some delegations had proposed, that the Commission would consider outside bodies' concerns relating to new aspects of maritime law, his delegation strongly believed that the topic of liability in maritime transport should be excluded, since it was already covered by the Hamburg Rules and The Hague regime. By establishing another regime in the area of liability, the Commission would be undermining current efforts at harmonization.

5. Mr. BURMAN (United States of America) introduced his delegation's proposal regarding future work on electronic commerce. From a review of the work done by the Working Group on Electronic Data Interchange (EDI) and discussions with commercial sector groups and government agencies in a number of countries, two major topics of concern had emerged: digital signatures and electronic commerce contract and performance. His delegation recommended that the secretariat should be authorized to produce a preliminary study on each topic, to be considered by the Working Group in 1997. The Working Group would then make recommendations which would be considered by the Commission at its thirtieth session in order to determine the course of future work.

6. International rules on digital signatures could be the key to further progress in electronic commerce. In recent months, many countries had begun to develop laws regarding digital signatures to provide standards by which a remote party could sign a document through computer means and have some reasonable commercial assurance of the signature's acceptability. The Commission had the unique opportunity to set international legal norms to guide the growth of electronic commerce. It would be far more difficult to unravel embedded differences between national laws in the future.

7. Moreover, in the case of electronic and computer-based communications and transactions, many legal issues were no longer covered under contract or copyright law. For example, where data messages and the sale of products which consisted of electronic data were concerned, it was no longer clear what was meant by the terms "performance" or "delivery" when those products were taken off the Internet. There again, the Commission could take the lead in providing the legal infrastructure for trade and commerce.

8. Lastly, his delegation wished to propose a third topic for future work which was based on a recommendation of the Working Party on Facilitation of International Trade Procedures (WP.4) of the Economic Commission for Europe, which had identified impediments to electronic commerce arising from "writings" and other such requirements. WP.4 had invited the Commission to assess the feasibility of undertaking corrective work in that area. The Commission could consider whether it could take any appropriate action after the preparation of a secretariat study.

9. Ms. BOSS (United States of America) said that the two main topics for future work proposed by her delegation had two essential characteristics which it believed should guide the Commission's future work in the field of EDI. Both topics dealt with areas where uniformity in law was crucial to the development of commerce and both were directly related to the Model Law. A number of jurisdictions, nationally and internationally, were beginning to consider the adoption of legislation that would determine the circumstances under which digital signatures would be recognized in commercial practice and had, in some instances, initiated systems for certifying the authenticity of those signatures. It was vital that the applicable rules should be uniform lest they become a barrier to international and national trade.

10. In the draft Model Law, the Commission had considered the extent to which data messages would comply with writing and signature requirements. Thus, the area of digital signatures was integrally related to the Model Law. While the Model Law had basic rules regarding the authenticity of messages and contract formation, those rules did not fully address the type of transactions that were currently being undertaken in an electronic environment. There existed a body of laws that governed the sale of goods, but there was no body of law anywhere, that dealt with such transactions as the licensing or purchase of software or with contracts granting access to information or data in an electronic environment.

11. The Commission still had to determine what the final work product in that area would be, what specific topics would be treated under either of the proposals and how the various issues would be handled. That was why her delegation had requested the secretariat to conduct a preliminary study of each topic which could then be discussed by the Working Group before being submitted to the Commission.

12. Mr. STURLESE (France) said that before making a decision on future work, the Commission should decide if it wanted to continue working on EDI or on build-operate-transfer (BOT) projects, since it did not have the resources to work on both topics simultaneously. If the Commission decided to continue working on EDI, his delegation did not consider digital signatures to be a topic

of fundamental concern at present. The Commission should continue the work it had begun on the possible preparation of a code of conduct for third-party service providers which provided the interface between users in an electronic environment.

13. Mr. HERRMANN (Secretary of the Commission) said that the Working Group on Electronic Data Interchange was reserved for EDI matters, subject to the Commission's decision and possible changes. As far as BOT was concerned, a substantive discussion could be held thereon at the next session of the Commission.

14. Mr. SORIEUL (International Trade Law Branch) said that the Commission should give very clear instructions to the secretariat concerning the scope of the studies it wished to have carried out because they involved fields in which there was very little literature available. The secretariat would have to rely heavily on the assistance of delegations. The Working Group should not have to waste time on lengthy debates on the exact scope of its mandate.

15. Mr. BURMAN (United States of America) said that his delegation had done its best to confine its proposals to practical topics and to modify them where necessary. It assumed that any important topic that was selected for consideration would of necessity involve third-party service providers, which were constantly growing in number and variety. His delegation had come to a similar conclusion on the subject of electronic registries, which was likely to become an increasingly common topic of discussion. Indeed, it now appeared more practical to take up both electronic registries and third-party service providers in the context of individual topics such as digital signatures and electronic contract and performance rules rather than as generic topics in themselves.

16. Mr. Won-Kyong KIM (Observer for the Republic of Korea) said that the Commission should continue its consideration of electronic commerce so that the Model Law could become a useful tool for the international community. With regard to the specific topics to be given priority, he found the United States proposal acceptable.

17. Mr. RENGER (Germany) said that because of the growing importance of electronic interaction in all fields, including international trade, the problem of digital signatures went far beyond commerce. It was related to a host of laws, including international civil law and administrative law as well. Indeed, he was not sure whether UNCITRAL was the appropriate body to discuss and find an internationally acceptable solution to the problem of digital signatures. His delegation did not believe that a role could be found for digital signatures which applied to international trade law treaties. One of the problems of the electronics field was the rapidity of its development. Delegations to UNCITRAL, which represented national Governments, should think about the overall welfare of their countries and not focus solely on the interests of the electronics industry, which was profit-driven.

18. Ms. SABO (Observer for Canada) said that while she agreed with the representative of France on the need to consider all priorities, she disagreed with him as far as EDI priorities were concerned. She supported the United

States proposal to undertake work in the areas of digital signatures and contract performance rules in electronic commerce. However, she was concerned that the Commission would be asking the secretariat to undertake too much.

19. Mr. ABASCAL (Mexico) said that he would prefer the Commission to continue working on EDI and to take advantage of the momentum already generated by the Working Group to develop the Model Law further. He suggested that the Working Group should be mandated to begin formulating a new set of rules or principles after examining and approving some of the topics submitted to it by the secretariat.

20. Ms. CRAGGS (United Kingdom) said that in her view, digital signature standards and the knowing with certainty the identity of the party one was dealing with were the absolute bedrock of electronic commerce. Very closely linked to that was the issue of performance rules. For that reason, her delegation supported the United States proposal that the Working Group should give top priority to work first on digital signatures followed closely by contract and performance rules.

21. Mr. ILLESCAS (Spain) said it was significant that once the Commission completed its current work on EDI it planned to change the title of the Model Law so that it referred to electronic commerce. The thorough understanding of that field acquired by the Commission and the Working Group on EDI over the previous five years should be exploited to the fullest. To the extent that resources allowed, a working group that dealt with those topics should continue to exist.

22. A good starting point for the work of the Working Group was digital signature; the expression of the will to negotiate with proper security and proper assurances that the data message corresponded to a will to negotiate. Equally important were third-party interventions in the passage of the electronic message, the rules relating to performance in the context of electronically concluded contracts and the question of inclusion by reference. Indeed, the latter aspect was a serious problem in trade transacted on paper; when such business became electronic the problem became even more acute. The issue of electronic registries also needed to be tackled.

The meeting was suspended at 4.40 p.m. and resumed at 5.15 p.m.

23. Mr. SORIEUL (International Trade Law Branch) said that the secretariat had some concerns about the proposed study on rules on digital signatures. Article 6 of the Model Law had deliberately been drafted in very general terms in order to accommodate the possibility of technological change. Very few legislations in the world had detailed rules on digital signatures. The Commission would therefore need to decide which field it wanted the secretariat to study and would need to provide the essential documentation, since few legal publications were available in the field.

24. Mr. CHANDLER (United States of America) said that four states in the United States of America had passed laws on digital signatures, and approximately 14 others were considering the adoption of such laws. Relevant materials could be furnished to the secretariat. Issues were emerging which had legal

implications and, with the proliferation of digital signature devices, the need for regulation would become apparent.

25. Mr. ABASCAL (Mexico) said that the name of the Working Group on Electronic Data Interchange should be changed in line with the new title of the Model Law.

26. Mr. FARIDI ARAGHI (Islamic Republic of Iran) said that there might not be enough material to warrant a study on the rules on digital signatures. His delegation would prefer to concentrate on incorporation by reference and third-party information and service providers.

27. Mr. STURLESE (France) said that everyone agreed it was important for the work on electronic commerce to continue. However, he had reservations about having the Working Group study the rules on digital signatures because the mandate was not very specific; moreover working groups were expensive, both for the United Nations and for Governments. Unless the Working Group had a clear and precise objective, it would waste time deciding what it should be discussing. In fact, the Working Group itself, in paragraphs 110 and 111 of its report (A/CN.9/421), had expressed doubts as to whether it would be realistic to focus exclusively on digital signatures.

28. Ms. BOSS (United States of America) said that it was difficult to specify a precise mandate for the Working Group and at the same time give it enough discretion to determine what needed to be done. Clearly, it would be inappropriate for the Working Group to formulate any technical requirements or to dictate the use of any specific technologies; the scope of the topic must be broad enough to encompass emerging technologies. Some specific legal issues that might be considered by the Working Group were the legal basis supporting the certification processes of certifying authorities; rules and guidelines associated with digital signatures; allocations of risk; responsibilities of users in cases of fraud or error; and the role and liability of third-party service providers.

29. The CHAIRMAN said she took it that the Commission accepted the proposal that the secretariat should prepare a study on the rules on digital signatures and a study on electronic commerce contract and performance rules.

30. It was so decided.

The discussion covered in the summary record ended at 5.40 p.m.